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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[FNS-2013-0033]

Request for Information: Supplemental Nutrition Assistance Program (SNAP) Enhancing Retail Food Store Eligibility; Extension of Comment Period

AGENCY: Food and Nutrition Service, USDA

ACTION: Notice; Extension of Comment Period

SUMMARY: Sections 3(k), (p) and (r), Section 7, and Section 9 of the Food and Nutrition Act of 2008 (“the Act”), and Title 7 Parts 271, 274, and 278 of the Code of Federal Regulations (“the regulations”) provide factors for determining the eligibility of retail food stores to participate in the Supplemental Nutrition Assistance Program (“SNAP”). This notice requests information from any and all interested parties on opportunities to enhance retailer definitions and requirements in a manner that improves access to healthy food choices for SNAP participants as well as program integrity, and ensures that only those retailers that effectuate the purpose of SNAP are authorized to accept benefits. The Food and Nutrition Service (“FNS”) considers access to a variety of healthy foods at SNAP retailers to be fundamental to the effectiveness of this critical nutrition assistance program. FNS is requesting information to understand what policy changes and, as needed, statutory changes, should be considered for retailer authorizations. FNS will use this information in determining how to make positive progress in the available healthy choices for program participants at authorized SNAP retail stores. The comment

period is being extended to provide additional time for interested parties to review this request for information.

DATES: The comment period for the notice that was published on August 20, 2013 (78 FR 51136) has been extended from October 21, 2013 to November 6, 2013. To be assured of consideration, comments must be postmarked on or before November 6, 2013.

ADDRESSES: Comments may be submitted through the Federal eRulemaking Portal at www.regulations.gov. Follow the online instructions for submitting comments electronically.

Comments can also be mailed or delivered to: Shanta Swezy, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 426, Alexandria, Virginia, 22302.

All comments submitted in response to this notice will be included in the record and will be made available to the public at www.regulations.gov. Please be advised that the substance of the comments and the identity of the individuals or entities commenting will be subject to public disclosure.

FOR FURTHER INFORMATION CONTACT: Shanta Swezy, Chief, Retailer Management and Issuance Branch, Food and Nutrition Service, (703) 305-2238.

SUPPLEMENTARY INFORMATION: At the end of fiscal year (FY) 2012, over 246,000 retailers were authorized to redeem SNAP benefits. This is an increase of almost 100,000 authorized stores since

2005. According to the most recent data available (2012), 82 percent of all benefits redeemed were redeemed at supermarkets, large grocers and superstores. Approximately 18 percent of benefits were redeemed at smaller stores, including convenience stores, small grocers and farmers' markets. Less than one percent were redeemed by authorized treatment programs, group homes, homeless meal providers, communal dining facilities and shelters as provided for in statute. A 2009 FNS study on benefit use indicates that 96.3 percent of all SNAP beneficiaries shopped at supermarkets or superstores at least once each month.

According to Sections 3(k), (p) and (r), and Section 9 of the Act, and Title 7, Parts 271 and 278 of the regulations, to be eligible to participate in SNAP, stores must sell food for home preparation and consumption and meet one of the criteria below:

(A) Offer for sale, on a continuous basis (any given day of operation), at least three varieties of qualifying foods in each of the following four staple food groups, with perishable foods in at least two of the categories:

- Meat, poultry or fish
- Bread or cereal
- Vegetables or fruits
- Dairy products

OR

(B) More than one-half (50 percent) of the total dollar amount of all things (food, nonfood, gas and services) sold in the store must be from the sale of eligible staple foods.

The last major changes to the store eligibility requirements took place in the early 1990's as a result of congressional action. Today, a store that consistently stocks as few as 12 total food items from the required staple foods categories could technically be licensed to participate in SNAP. Store authorization data collected from retailers by USDA indicates that over 90,000 currently authorized SNAP retailers have substantial (over 50 percent) sales that stem from ineligible items.

In addition to providing minimal access to healthy food, retailers that do not provide sufficient healthful offerings often tend to be those stores that present the greatest integrity challenges for USDA. The sale or exchange of SNAP benefits for cash is referred to as “trafficking”, an illegal activity punishable by law. According to the latest FNS trafficking study covering the period 2009-2011, 99.5 percent of all trafficking stores involve retailers other than supermarkets, superstores and large grocers. Further, 84.5 percent of all benefit dollars trafficked involve retailers other than supermarkets, superstores and large grocers. The large number of smaller stores – roughly 222,000 authorized store locations nationwide – redeemed 15 percent of SNAP recipient's benefits and present the greatest integrity challenge for FNS; the trafficking rate in these store types was 7.6 percent. The store violation rate was 12.45 percent. A 2006 report by the Government Accountability Office (GAO) suggested that the minimal stocking requirements in SNAP contribute to corrupt retailers entering the program, and noted that FNS regulations lacked clarity as to what constitutes sufficient stocking requirements.

FNS is concerned that there are a large and growing number of authorized retailers that do not provide healthful food offerings to SNAP recipients and that engage in fraud. These retailers represent a management challenge for the program that must be balanced against the need to ensure effective access

to healthful, nutritious food for SNAP households. FNS has an interest in assuring that all authorized retailers will play by the rules and further the purpose of SNAP.

FNS' objectives are to improve the availability of more healthful foods without compromising access to nutritious food for SNAP participants, or unnecessarily burdening the retailers that redeem SNAP benefits, and to improve the integrity of the program. The Agency is seeking public input regarding the following questions, with particular attention to impacts of each on program integrity, healthy food choices, access to food and retailer operations:

1. Is ensuring that SNAP retailers provide SNAP clients access to healthy food choices a reasonable priority for establishing SNAP store eligibility criteria?
2. Are there store types that clearly meet all of the Program goals and, consequently, should always be eligible for SNAP participation?
3. Conversely, are there store types that do not effectively improve access to food choices (e.g. stores that sell low amounts of food when compared to the amounts of distilled liquor, tobacco and/or lottery tickets sold) and, therefore, should always be ineligible for SNAP participation?
4. Would a different definition of the “staple foods¹” required in SNAP authorized stores help to ensure that these stores offer more healthy food choices? If so, what kinds of changes would be most effective? Specifically, almost all foods can be counted towards meeting staple food requirements, including those high in added sugar, sodium or solid fats. Should foods high in these components be counted as staple foods when determining store authorization requirements?

5. How should prepared foods with multiple ingredients, such as chicken pot pie or other frozen dinners, or single serving meat jerky packages, be treated with regards to “staple foods” categories?
6. Do twelve items (the minimum amount necessary to meet SNAP authorization criterion A, by virtue of needing three varieties in the four different staple food categories) provide adequate variety for a retailer to further the Program’s purpose? If not, what would be a more appropriate requirement?
7. Currently, retailers who are authorized under criterion A are required to stock perishable items (e.g., fresh, frozen or refrigerated fruits and vegetables; dairy; meats, poultry and fish; bread or cereal) in two categories. Should perishable items be required in more than two categories?
8. Are 50 percent of sales in staple foods, as currently required for criterion B, sufficient to ensure that a SNAP authorized store furthers the program’s purpose, given the current definition of “staple foods”? Would this percentage be sufficient if the definition of “staple foods” is changed to exclude items high in added sugar, sodium or solid fats?
9. Should stores whose primary business (as evidenced by marketing, inventory or sales) is not the sale of food, be eligible to participate in SNAP?
10. Restaurants are generally prohibited from being SNAP retailers, and hot foods cannot be purchased with SNAP benefits. However, there are authorized retailers who primarily sell food for immediate consumption, often on premises, but also sell their products cold and heat them for SNAP recipients immediately after purchase for a nominal fee. These stores qualify today based on the array of raw ingredients, such as unbaked pizza or raw fish. Should such stores be eligible for participation in SNAP?

11. Should all retailers who meet SNAP eligibility criteria be authorized, even when sufficient store access for recipients is not a concern?
12. If store access were a concern in an area where no store meets basic eligibility criteria for SNAP authorization, how should FNS select the stores to authorize that best serve the needs of the client population? Should FNS employ an evaluation and scoring system? If so, what criteria should make up such a system?
13. How should integrity and management priorities be balanced against healthy food choice criteria in the SNAP authorization process? What elements could be used to assess integrity risks, and how should they be applied?
14. Are there any other ways in which the criteria for retailer eligibility should be changed? If so, how?

Audrey Rowe
Administrator
Food and Nutrition Service

Date

October 23, 2013

¹Statutory, Regulatory and Policy Definitions of “Food”, “Staple Food” and “Accessory Food” :

Food and Nutrition Act of 2008 7 U.S.C 2012 Section 3 Definitions:

(k) “*Food*” means (1) any food or food product for home consumption except alcoholic beverages, tobacco, and hot foods or hot food products ready for immediate consumption other than those authorized pursuant to clauses (3), (4), (5), (7), (8), and (9) of this subsection, (2) seeds and plants for use in gardens to produce food for the personal consumption of the eligible household, (3) in the case of those persons who are sixty years of age or over or who receive supplemental security income benefits or disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act [(42 U.S.C. 1381 et seq.)], and their spouses, meals prepared by and served in senior citizens’ centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that feed such persons, private establishments that contract with the appropriate agency of the State to offer meals for such persons at concessional prices, and meals prepared for and served to residents of federally subsidized housing for the elderly, (4) in the case of persons sixty years of age or over and persons who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, meals prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit organization or by a private establishment that contracts with the appropriate State agency to perform such services at concessional prices, (5) in the case of narcotics addicts or alcoholics, and their children, served by drug addiction or alcoholic treatment and rehabilitation programs, meals prepared and served under such programs, (6) in the case of certain eligible households living in Alaska, equipment for procuring food by hunting and fishing, such as nets, hooks, rods, harpoons, and knives (but not equipment for purposes of transportation, clothing, or shelter, and not firearms, ammunition, and explosives) if the Secretary determines that such households are located in an area of the State where it is extremely difficult to reach stores selling food and that such households depend to a substantial extent upon hunting and fishing for subsistence, (7) in the case of disabled or blind recipients of benefits under title I, II, X, XIV, or XVI of the Social Security Act, or are ³⁻² individuals described in paragraphs (2) through (7) of subsection (j), who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under such section [(42 U.S.C. 1382e(e))], meals prepared and served under such arrangement, (8) in the case of women and children temporarily residing in public or private nonprofit shelters for battered women and children, meals prepared and served, by such shelters, and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by private establishments that contract with the appropriate agency of the State to offer meals for such individuals at concessional prices.

(r)(1) Except as provided in paragraph (2), “*staple foods*” means foods in the following categories:

- (A) Meat, poultry, or fish.
- (B) Bread or cereals.
- (C) Vegetables or fruits.
- (D) Dairy products.

(2) “*Staple foods*” do not include accessory food items, such as coffee, tea, cocoa, carbonated and un-carbonated drinks, candy, condiments, and spices.

7 CFR Part 271 General Information and Definitions: *Staple food means* those food items intended for home preparation and consumption in each of the following food categories: meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products. Commercially processed foods and prepared mixtures with multiple ingredients shall only be counted in one staple food category. For example, foods such as cold pizza, macaroni and cheese, multi-ingredient soup, or frozen dinners, shall only be counted as one staple food item and will normally be included in the staple food category of the main ingredient as determined by FNS. Hot foods are not eligible for purchase with food stamps and, therefore, do not qualify as staple foods for the purpose of determining eligibility under §278.1(b)(1) of this chapter. Accessory food items including, but not limited to, coffee, tea, cocoa, carbonated and un-carbonated drinks, candy, condiments, and spices shall not be considered staple foods for the purpose of determining eligibility of any firm. However, accessory foods that are offered for sale in authorized retail food stores are eligible food items which may be purchased with food stamp benefits.

USDA FNS Policy: “*Accessory food items include coffee, tea, cocoa, carbonated and un-carbonated drinks, candy, condiments and spices. All foods not identified as accessory in the Act and regulations must be considered staple foods*”.

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